

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LK CREATIVE CONSULTING, LLC,

Plaintiff,

v.

LM MEDICAL, PLLC,

Defendant.

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Civil Action No.:

COMPLAINT AND JURY
DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, LK CREATIVE CONSULTING, LLC (“LK” or “Plaintiff”), brings this complaint in the United States District Court for the Southern District of New York against LM MEDICAL, PLLC (“LM Medical” or “Defendant”), alleging as follows:

PARTIES

1. LK brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Plaintiff’s original copyrighted Works of authorship.
2. LK represents an elite group of portrait, lifestyle, beauty, and fashion photographers for editorial and commercial licensing.
3. SARAH BROWN (“Brown”) is an experienced and sought-after commercial photographer specializing in high-end, highly-produced images of models for top editorial and advertising clients throughout the world. Brown resides in London, United Kingdom.
4. LM Medical is a New York professional company, with its principal place of business at 33 Fifth Avenue, #1B, New York, New York, and can be served at the same address.

5. LM Medical is a plastic surgery practice operated by sisters, Lesley Rabach, and Morgan Rabach, both board-certified dermatologists.
6. LM Medical owns, operates, and is solely responsible for the content posted to the website, www.lmmedicalnyc.com, and corresponding social media.

JURISDICTION AND VENUE

7. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
8. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
9. This Court has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b), because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.
10. Defendants are subject to personal jurisdiction in New York.
11. This Court also has personal jurisdiction over Defendant, and venue in this District is proper under 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

12. Plaintiff represents many photographers, including Brown.
13. Plaintiff is the exclusive licensee of the photographic images by Brown, including the copyrighted Work at issue in this litigation.
14. On behalf of Brown, Plaintiff obtained a Certificate of Registration with the United States Copyright Office for the Work.

15. Plaintiff, as the exclusive licensor of the Work, has also been expressly authorized by Brown to enforce Brown's copyright in Work, including representing Brown in U.S. District Court.
16. The Work is an original work of authorship.
17. Defendant has never been licensed to use or display the Work at issue in this action for any purpose.
18. On a date after the Work at issue in this action was created, but prior to the filing of this action, Defendant copied the Work.
19. Defendant copied copyrighted Work without Plaintiff's permission.
20. Brown captured the photograph, "Bintou_Sophia6961" ("Copyrighted Photograph") on December 14, 2018. [Exhibit 1].
21. On January 3, 2019, Brown posted Copyrighted Photograph to www.sarahbrownphotography.co.uk/overview/2019/1/3/2tlxy2zwe042vk9wmclsx78lu2myr_m (Last visited August 8, 2021). [Exhibit 2].
22. Beginning on or about March 1, 2020, Defendant copied and posted Copyrighted Photograph to the Defendant's commercial website, www.lmmedicalnyc.com (Last visited August 8, 2021).
23. Defendant posted Copyrighted Photograph to the following URL(s):
 - www.lmmedicalnyc.com/lip-lift (Last visited August 12, 2020). [Exhibit 3].
24. Defendant used Copyrighted Photograph as a full-page image to illustrate LM Medical's "Lip Lift" services.
25. Plaintiff registered Copyrighted Photograph with the United States Copyright Office on November 12, 2020 (Registration No.: VA 2-227-702).

26. Defendant copied and posted Copyrighted Photograph without license or permission from Plaintiff.

COUNT I: INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. § 101 ET SEQ.

27. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.

28. Plaintiff is, and at all relevant times has been, the holder or licensee of exclusive rights under United States copyright with respect to Copyrighted Photograph, which is the subject of a valid and complete Certificate of Copyright Registration by the Register of Copyrights.

29. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute Copyrighted Photograph to the public.

30. Plaintiff is informed and believes Defendant, without the permission or consent of Plaintiff, copied and posted Copyrighted Photograph to LM Medical's' commercial website, www.lmmedicalnyc.com. In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's copyright and exclusive rights under copyright.

31. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

32. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to actual damages, including any profits realized by Defendants attributable to the infringement, pursuant to 17 U.S.C. § 504 for Defendants' infringement of Copyrighted Photograph.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, its officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendants by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;
- E. Awarding Plaintiff his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and
- F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: April 28, 2021

/s/David C. Deal

David C. Deal

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